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2 Michael S. Biggs (SBN. 237640)
   BIGGS LAW PC
3 PO Box 454
   Petaluma, CA 94953-0454
4 Telephone: (707) 763-8000
   Facsimile: (707) 763-8010
5
   Attorney for Plaintiff's
6 Heath Thompson, Miranda Thompson

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9   **UNITED STATES DISTRICT COURT**

10   **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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                                          Case No.:   C 08 – 02274 JL
13 HEATH THOMPSON,
                                          PLAINTIFF'S EX-PARTE
14   **APPLICATION AND SUPPORTING**
                                          DECLARATION
15 Plaintiffs,   **OF MICHAEL S. BIGGS**
                                          TO MODIFY
16   v.   **ORDER SETTING INITIAL CASE**
                                          MANAGEMENT CONFERENCE AND
17 ROBERT OANDASON,   **ADR DEADLINES**

18 Defendants.
                                          Date: Ex-Parte
19   Time: Ex-Parte
                                          Judge: LARSON
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   _____/
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23 I, Michael S. Biggs, declare as follows:

24 1.   I am an attorney duly licensed to practice law in all courts of the State of California and

25 before the United States District Court for the Northern District of California and I am the

26 attorney of record for plaintiffs HEATH THOMPSON and MIRANDA THOMPSON.

27 2.   Plaintiff hereby moves the Court to grant an Ex Parte Motion to to modify

28
   _____
   Thompson v. Oandason et al   1   *Case No.: C 08 -02274 JL*
   Plaintiff's Ex Parte Application to Modify Initial
   Case Management Conference and ADR
   Deadlines

order setting initial case management conference and ADR deadlines.

3. Defendant Robert Oandason has filed an answer on September 30, 2008 and again on October 3, 2008, in this matter.

4. Defendant Michael Flores has failed to file an answer.

5. Previously the Court was requested to modify the scheduling order as Defendant Oandason had expressed through attorney Myles Dresslove tthat he was interested in settlement talks prior to incurring expense on answer.

6. Subsequently Oandason retained attorney Tadd Aiona who asked for an accounting estimate on Plaintiffs alleged damages.

7. On August 12, 2008 Plaintiff executed a retainer with Robbye L. Mohn CPA CFE with the San Francisco firm "RGL Forensic Accountants & Consultants, the purpose of which to fix damages and also serve as Plaintiffs Rule 26 expert.

8. As of the first week of October Ms. Mohn is working toward completion on her estimate.

9. In the meantime Mr. Aiona attorney for Oandason has been in contact with me several times August through September where counsel and I in good faith have attempted to drive a settlement forward using general damage figures as we have waited for Ms. Mohn to complete her project.

10. As Mr. Flores has defaulted Plaintiff will file to enter Flores default.

11. In light of these circumstances involving Plaintiff and Defendant Oandason's good faith settlement attempts the Court is respectfully requested to once again modify the scheduling order in light of impending CMC and just recently filed answer by Oandason.

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12. Plaintiffs will not be prejudiced by such an extension and Plaintiffs damages will take shape once the expert Ms. Mohn's report is complete.

13. It is not anticipated Defendant will object to this Ex-Parte request as counsel has had recent telephone meet and confer and Mr. Aiona expressed that his client would not be prejudiced and is eager to go forward with the Courts ADR program of which Plaintiff is in agreement.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This declaration was on the 7th day of October, 2008, executed in Petaluma, California.

Dated: October 7, 2008

Respectfully Submitted

<u>/S/ Michael S. Biggs</u>
Michael S. Biggs
Attorney for Plaintiff's
HEATH THOMPSON
MIRANDA THOMPSON

ORDER

The SCHEDULING ORDER as to SETTING INITIAL CASE MANANGEMENT CONFERENCE AND ADR DEADLINES shall be revised to put over meet and confer and initial disclosure requirements until after xxxxxxxxx 2008. Initial Case Management Conference to be held October _____29,_____ 2008 at 10:30 a.m.

IT IS SO ORDERED.

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Dated: October __7__ 2008

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Judge of the United States District Court
Northern District of California

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